

T H E C A S E O F

Mrs. Mary Stout Widow.

IN March 1699. being within the space of a Year after the supposed Murder of Mrs. Sarah Stout, a Writ of Appeal was sued out of the High Court of Chancery, against Peter Couper, Esq; John Marson, Ellis Stevens, and William Rogers, Gent. in order for the Trial of them, at the Suit of one Henry Stout, Heir at Law to the Deceased, and the Appellant named in the Writ of Appeal, who at the time of suing out such Writ, was about the Age of Ten Years.

Mrs. Stout, the Mother of the deceased, after such Appeal was sued out, caused

the Under-Sheriff of the County of Middlesex, to take the Parties to Execution thereof, some short time after, she sent a Neighbour of hers to Mr. Toller, to know what he had done, or would do, with the Writ; whether he had Executed the same, or whether he would return the Parties were not to be found; which Message was duly carried, with a particular account, That Mrs. Mary Stout, the Mother of the deceased, was the Person that sent the same. To which Mr. Toller returned this answer, *Mrs. Stout is a very busy, uneasy Woman; but however, when the Writ is out, I will make such Return thereof as the Law directs.*

Mrs. Stout having received such an Answer, and expecting to have a Return of the Writ, according to Mr. Toller's promise, on the 13th of April following, was in order thereto, and for the further designed Prosecution of the matter, duly admitted Guardian to the Appellant; and as such, on the 15th of the same Month of April, being the first day of the then Easter Term, appeared Personally in the Court of King's Bench, in order to Arraign the Appellees, in case the Under-Sheriff should have returned them taken.

Upon such attendance of Mrs. Stout, Mr. Toller was frequently called, pending the whole time the Court sat (the Writ being then Returnable) to make a Return of the Writ: But he made default, and instead thereof, Mr. Marson, one of the Appellees appeared in Court, and prayed either to be Arraigned or Discharged, Tho' the Writ was not then, or ever since, seen or returned in Court; so that such Mr. Marson's motion appearing only to be a Shew, or Bravado, no damage or advantage being to be sustained or gained to him thereby; the same was rejected.

Upon the second day of the same Term, the Court of King's Bench was moved on the behalf of Mrs. Stout, that a short day might be appointed peremptorily for Mr. Toller to make his Return. But then (tho' Mr. Marson knew of the Writ of Appeal's coming to Mr. Toller's hand, as appears by his praying an Arraignment but one day before,) it was suggested in Court, That no Writ of Appeal was ever left

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with Mr. *Toller*, against the Appellees: And upon such Suggestion, Mrs. *Stout* then lost the benefit of her Motion, and was forced the next day to get an Affidavit of the delivery of the Writ, which she accordingly did; and thereupon she moving again for a peremptory Return, then the Under-Sheriff's Receipt of the Writ of Appeal was granted, and thereupon a Rule of Court obtained to compel him to appear, and make a Return of the Writ; which Rule was served, and thereupon Mr. *Toller* soon after attended, and by Affidavit informed the Court, That upon the 16th day of the same Month of *April*, (which was a day after the Return of the Writ, and three days after Mrs. *Mary Stout* was admitted Guardian to the Appellant) he delivered up the Writ into the Infant's Hand.

Upon which account given by Mr. *Toller*, the Court of King's Bench order'd him to be Examined upon Interrogatories, touching the delivery of the Writ; and accordingly Mrs. *Stout* the Guardian prepared the same, but could not without considerable Difficulty get him Examined, (being forced to be at the Charge of two or three Orders of Court, for that purpose, before he came.) At last his Examination was taken, in and by which he owns the Receipt of the Writ of Appeal; And that he was informed, That Mrs. *Mary Stout*, the Mother of the deceased, prosecuted the said Writ, that she sent the same to him; and that the Infant, the Appellant, was a perfect Stranger to him, when he delivered it into his hands: But then, to extenuate the matter on his own behalf, the Reasons he alledges in his Examination for such his delivery, are, That the Appellant came with the Mother, Uncle, Aunt, and one Mr. *Wodford*, an old Acquaintance of his, for the Writ; and that Mr. *Wodford* informed him of the Reality of the Appellant, and his Relations; and delivered him a Note under the Hand of *William Cowper*, Esq; purporting the same, That the Infant was the Plaintiff in the Appeal; that one of the Women was his Mother, and that the other Man and Woman his Uncle and Aunt; which, together with the ready Answers they gave to such Questions as Mr. *Toller* asked them, induced him to believe them to be the real Parties; as in his Examination he sets forth.

Mr. *Toller* says further, That on the 16th of the same Month of *April*, he desired the Infant, his Mother, Uncle and Aunt, to deliver him back the Writ; but they declared, That the Infant with advice had burnt the same.

Mr. *Toller*, in his Examination, gives this account, That some short time before his Receipt of the Writ, he received a Letter from Mr. *William Cowper*, to know whether any Writ of Appeal was come to his hands, against Mr. *Spencer Cowper*: To which he answer'd, there was none: That some short time after such Writ was come to his hands, he received another Letter from Mr. *William Cowper*, to the same effect of the former: To which Mr. *Toller* answered, There was; and sent him the Contents of the said Writ. That after such Writ came to his hands, Mr. *Spencer Cowper* sent him a Letter, to know whether he had received any Writ against him: To which Mr. *Toller* informed him, He had. So that by Mr. *Toller*'s own Examination, a perfect Correspondence is owned; and an Intelligence from time to time, and from one party to another, is given.

That upon the last day of the same Term, Mr. *Toller*'s Examination was Reported to the Court of King's Bench; who, upon the hearing the same, were of opinion, That he was guilty of an high Misdemeanour, and was in Contempt of that Court; and thereupon was committed to the *Marshalsea*, and fined 200 Marks.

That Mrs. *Stout* having received no satisfaction for the Blood of her Daughter, by the Under-Sheriff's being so fined, did petition the now Lord Keeper for a New Writ; the time being elapsed then for the Suing out of another of Course; at which time also, there was a cross Petition preferr'd in the Infant's Name, praying, That no new Writ of Appeal should be Sued out in his Name. And the Subject Matter of both Petitions being debated before the now Lord Keeper, the Master of the Rolls, the late Lord Chief Justice *Treby*, the Lord Chief Baron *Ward*, and Mr. Justice *Powell*; upon such Debate, it not then appearing by any positive Proof, that the Appellees in the Writ, nor any of them, were privy to the Destruction of the Writ: It was therefore thought hardly Reasonable, that a New Writ should be granted; which was a great Cause of Mrs. *Stout*'s Petition being rejected.

Now Mrs. *Stout*'s Petition was grounded purely upon another bottom, (she not imagining that such an Objection would have been started.) For she was advised, that if Justice had been obstructed, whether it had been by accident, or design, in either

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Cafe a fuitable Remedy might have been found : As, fupposing the Writ of Appeal had been accidentally burnt when in the Sheriff's Custody: as it really was, when it was out, in refpect to have a Difcovery of Truth, the Court, which firft gave the Writ (ſhe was adviſed by Counſel learned in the Law) could fupply the loſs of it.

Had ſhe imagined, that all the Appellees would have ſo much as inſtanced their total Ignorance, as to the Deſtruction of the Writ, ſhe could have much better prepared her ſelf to have given them an Answer—She could have ſet forth how the Infant, his Mother, and the Appellees Attorney, went in a Coach with Four Horſes, to the Under-Sheriff at *Hertford*, and there took the Writ of Appeal from him, and from thence brought it to *London* : She could have informed the Court of a more particular Intelligence, lately confirmed, concerning the Deſtruction of the Writ, by whoſe Order, and at whoſe Chamber, the ſame was burnt : Which matters, if yet Examined, will ſufficiently Evince, whether the Appellees, or ſome one of them, were privy or not to the Deſtruction of the Writ.

There was an Objection againſt Mrs. *Stout*'s Petition, That the Writ of Appeal was never well Sued out, (the Infant nor his Mother, not knowing of the ſame till afterwards.) But to that, beſides the Proofs Mrs. *Stout* could have given to the contrary, ſhe was and is ſtill adviſed, That her being duly admitted Guardian, by the free Conſent of the Infant, (tho' ſubſequent in time to the Suing out of the Writ) the ſame in Law is very Authentick, and makes the ſame well ſued out. And it is preſumed, that no Perſon will ſay, That the Lord Keeper, and the other Judges did all agree to the contrary, upon debate of the Matters before them.

It was mightily inſiſted upon by the Counſel for the Appellees, at the hearing of both Petitions, as if Mrs. *Stout* ſhould cauſe her ſelf to be admitted Guardian to the Infant, only to protect her Eſtate from the Infant, and that without the privy of the Infants Mother, or any of his Relations : But (beſides the very Admittance it ſelf, which is purely for Proſecuting the Appeal, and for nothing elſe) Mrs. *Stout* was always ready to diſcover the Title of her Eſtate; and never but declared, That the Infant had no right thereto. And as to the Infant's Mother's not knowing of Mrs. *Stout*'s Deſigns, it is very eaſily answered, for it is not only Sworn, and the Affidavits filed in the *Kings-Bench*, That Mrs. *Stout* wrote to the Infant's Mother, what her Deſigns were : But alſo, a particular Account is in thoſe Affidavits ſet forth, How willing the Infant's Mother was to ſend her Son to Mrs. *Stout*, Ordering one of his Uncles to carry him to her, for Mrs. *Stout* to do with him as her Occaſions required ; and withal directing ſuch Uncle to deliver her Son to Mrs. *Stout*, and to none but her, and to do according to her Directions.

It hath commonly been Reported, as if the Proſecution in this Appeal, hath been purely Vexatious, Begun by a Body of *Quakers*, and Eſpouſed by a Faction at *Hertford*, againſt Mr. *Cowper*'s Intereſt. But whoever the Fomenters, or Spreaders abroad of ſuch Reports are, they would do well to conſider, if it were their own Cafe, to have an only Child murdered, and her Reputation rendered Infamous to Poſterity, whether Nature and Duty would not oblige them to uſe all means to make a Diſcovery of the Cauſe thereof? And whether they would not think it hard, to have their own Endeavours reflected on, and their utmoſt Diligence accounted to be the Cauſe of a Party?

It hath alſo been Reported, and perhaps by ſome of the Appellees may be objected, That the very Method, in the Proceſs of this Appeal, hath been Malicious, in delaying the Suing out of the Writ, until the time was almoſt Elapſed, thereby to keep the Appellees in an uneaſie Suspence. But in Answer to that, 'tis confeſſed, That it was much longer before the Writ of Appeal was Sued out, than was deſired or expected ; becauſe it was near half a Year before Mrs. *Stout* could find out (tho' all that while ſhe made a diligent Search) the proper Perſon to make an Appellant ; and after ſhe had, ſhe was forced to Examine moſt of the Registers in *London* and *Southwark*, to make out his Pedigree ; and which as ſoon as ſhe had done, the very next day ſhe cauſed the Writ of Appeal to be Sued out ; ſo that it was her Miſfortune, and not her Malice, in being under the neceſſity of ſo long a delay.

It is commonly urged, as a ſtrong Argument, againſt a ſecond Trial of the Appellees, That there is no new Evidence, that Mrs. *Stout* hath againſt them, but ſuch

Such Persons, whoever they are, not only Assert, what they are totally Ignorant of, but also Conclude, that Mrs. *Stout* takes a great deal of Pleasure (especially now, in her Old Age) in being in a constant Fatigue, and considerable Expence; purely to be rendred Ridiculous to the World, and Uneasie to her Self, in the fresh and daily Renewals of her great Loss. In Answer to which, She is sufficiently Assured, That She Goes and Acts by other Principles and Designs; and that she hath more Material Evidence than ever yet was made Publick; and that She believes the Appellees (tho' they pretend their Innocency is fenced providentially with such Circumstances, as that they need not fear) do not care to come to the Test; or else, Why should there be so vigorous an Opposition against so plain an Act of Justice, if there was no Matter of Fact, that could be proved against them, nor no concurring Circumstances, that would any way affect them (as they seem to Insinuate?) It would have Redounded much more to their Honour and Reputation, and have wiped off all Occasion of Reproach, if (instead of so mean an undermining of Justice, in the Destruction of the Writ of Appeal) they had undergone a Second Trial; It being impossible (according to their own Assertions) for them to Miscarry, or be found Guilty; All Persons must certainly know, That it would be no Prudence in Mrs. *Stout*, to Divulge her Evidence before a Trial; and if She doth but act Prudently, for any therefore to alledge, She hath no Proof, is purely to speak at Random and at a Venture, and ought to be regarded accordingly.

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